APPENDIX A.

No. 118006

Marguerite Lovelett Nowell,	}	Superior Court,
vs.		Fairfield County,
Ames Nowell.		August 19, 1965.

REPORT OF STATE REFEREE.

This matter was referred to me as State Referee to hear the evidence and report to the court.

1. The plaintiff and the defendant were married at Elkton, Maryland, on April 6, 1957. Both parties came to Connecticut on December 31, 1959, or January 1, 1960. The original complaint, seeking a divorce, is dated November 19, 1962. Paragraph 3 of the complaint alleges cruelty from January 1, 1962, to date of writ but does not allege that the cause of action accrued since removal into this state.

2. By an amended complaint dated May 31, 1963, and filed June 5, 1963, the plaintiff dropped her divorce proceedings and substituted one count for separation and one count for equitable support.

3. Both parties have filed briefs setting forth their respective claims. In my opinion the plea to the jurisdiction should be sustained as to the claims for divorce or separation because the residence requirements have not been met. As to the second count of the amended complaint, seeking equitable support, I am of the opinion that the plaintiff is not barred by residence requirements. Both parties have cited numerous cases in support of their claims, but the

case of **Artman v. Artman,** 111 Conn. 124, seems to control the question here involved. In that case neither party lived in Connecticut but the court took jurisdiction through attachment of property located in this state. It is my opinion, therefore, that the plea to the jurisdiction does not invalidate the action brought under the second count of the amended complaint, namely, an action for equitable support.

4. It is worthy of note that the amended answer of the defendant, dated September 4, 1964, setting up a cross complaint for divorce, alleges in paragraph 2 that "The parties hereto have resided continuously in this state three years next before the date of the complaint in this action and this cross complaint." In other words, the defendant is willing to overlook the residence requirements in so far as they apply to his action for divorce, but is not willing to overlook them in so far as the plaintiff's case is concerned. Nevertheless, I am bound by the evidence as to residence and must sustain the plea to the jurisdiction except as to the claim for equitable support.

5. In a claim for equitable support it is not necessary that the acts complained of antedate the bringing of the action. Any act committed by the defendant up to the date of trial may be good justification for an action of equitable support. While the statute may be invoked in such an action, it may also be brought under the common law. **Artman v. Artman,** supra.

6. If the plaintiff wishes to reinstate the first count in the amended complaint, she should apply

to the court for permission to allege in her original or amended complaint that her cause of action arose after moving into this state. I do not have authority to pass such an order.

7. In view of my conclusion that the plea to the jurisdiction is good as to the original complaint and the first count of the amended complaint, I am left only with the second count of the amended complaint for consideration. **Artman v. Artman,** supra.

8. At the time of the institution of the suit both parties submitted to the jurisdiction of the court. This fact makes the instant case even stronger than the **Artman** case because, in that action, the court did not have jurisdiction over the person of the defendant and bound the defendant only by subjecting his property under attachment to the judgment.

9. In view of this ruling, I must carefully examine the evidence to determine whether the defendant's conduct justified the plaintiff in living separate and apart from him. I have never had the benefit of observing the defendant on the witness stand. For some reason, known only to himself, he did not attend any of the hearings. His testimony comes only by way of deposition.

10. Without detailing the various acts of the defendant which justified the plaintiff in living apart, I am of the opinion that his treatment of her amounted to intolerable cruelty. His association with Miss Eustace, his correction of the plaintiff's English, his special defense alleging adultery without pursuing it on trial, and later withdrawing it, his attack of her

previous divorce, his action for annulment of the marriage in another jurisdiction while the instant case was being tried here, are all acts, the cumulative effect of which amounted to conduct justifying a separation. I have not given serious consideration to the gun incident, although I cannot blame the plaintiff for fearing him. I am led to interesting though unsatisfactory speculation as to what evidence he might produce in support of his theory of metaphysical reality, which would seem, to one who does not entertain his basic premise, to lie in the realm of baffling and equivocal conjecture. In any event, I find that the plaintiff is justified in living separate from the defendant and is entitled to be supported by him in a manner suitable to their station in life. The allegations in the plaintiff's more specific statement and the allegations in the defendant's cross complaint all tend to establish a status of irreconcilability which makes living together intolerable. The absence of physical abuse does not condone or rule out the other acts which may be equally intolerable.

11. I come then to the question of support. The defendant is a wealthy man by any standard. His income of $108,000 a year should enable him to live in luxury. By virtue of this position his wife has a right to expect support consistent with his station in life. It is true that he has encumbered his estate and income by extraordinary indulgences. He must pay some $22,000 a year as alimony to previous wives, he has an expensive house with a large mortgage and he has borrowed freely. But I cannot overlook the fact that his trust funds are substantial and that he

has put one trust fund even beyond his own reach, except as he uses it for borrowing purposes.

12. On the other hand, the plaintiff does not need an expensive home with all incident expenses in its maintenance. She could move into one of her own properties and live more economically.

13. The court has ordered payments pendente lite of $1650 a month. If she and the defendant dispose of their home in Darien, she could reduce her living expenses so that the amount ordered by the court will give her a comfortable and even luxurious life. I believe that, in spite of the defendant's debts to his own estate, he ought to support his wife in a proper manner. It may necessitate giving up his boat and various living quarters which add substantially to his living expenses. In my opinion the defendant should continue to pay the plaintiff $1650 a month, with no extras.

14. The question of legal fees to plaintiff's counsel is another troublesome question to determine. From what I have observed during the trial of the case, I am of the opinion that counsel should be paid a fee of $25,000, less $1000 which has already been paid for taking a deposition.

15. I, therefore, recommend as follows:

1. That the plaintiff be permitted to live separate and apart from the defendant.

2. That the defendant be ordered to pay the plaintiff the sum of $1650 a month for her support,

the same to be in full of all obligations to her as his wife.

3. That the defendant be ordered to pay to plaintiff's counsel the sum of $24,000 as counsel fees.

4. That the house in Darien be sold and the proceeds divided equally between the parties, or that the defendant pay the plaintiff her equity in an undivided one-half interest in said property.

16. There are many other claims and cross claims between the parties which I do not have the power to determine. For instance, she claims a right to the life use of certain furniture which is subject to a mortgage. This and other matters will call for additional legal procedures or settlement between the parties, which will save them both protracted legal actions.

17. This matter has been strenuously contested by both parties. Their briefs show the depth of their feelings. I hope I have been of assistance to them.

18. The court order includes payment of taxes, mortgage interest, insurance and major repairs on the house in Darien. I recommend that these payments be continued until the house in Darien is sold.

ABRAHAM S. BORDON
State Referee

APPENDIX B.

No. 118006

Marguerite Lovelett Nowell, vs. Ames Nowell.	Superior Court, Fairfield County, December 1, 1965.

AMENDED REPORT OF STATE REFEREE.

The report of the State Referee dated August 19, 1965, is hereby amended. The amendment is made possible by the granting of an amendment to the plaintiff's amended complaint in which it is alleged that the cause of action for legal separation arose subsequent to the parties' removal into this state.

Accordingly, in addition to my finding heretofore, made in the report of August 19, 1965, I further find as follows:

1. The plaintiff and defendant have resided continuously in this state from January 1, 1960, and the cause of action for legal separation, as hereinafter set forth, arose subsequent to the parties' removal into this state.

2. The defendant, on divers days between January 1, 1960, and the date of this complaint, has been guilty of intolerable cruelty to the plaintiff, to wit:

On numerous occasions and beginning in January, 1960, the defendant corrected the plaintiff's grammar and criticized her use of the English language in

a manner causing her embarrassment and humiliation;

From and after January 1, 1960, the defendant, by his conduct as aforesaid and by other comments to the plaintiff and others, has adopted a course of conduct designed to ridicule, embarrass and humiliate the plaintiff to her friends and in the community in which they lived.

From and after January 1, 1960, the defendant by his conduct as aforesaid and by his general behavior and attitude, undertook by calculation and design to cause the plaintiff to fear for her life and for her safety;

From and after January 1, 1960, and for a period of approximately three years, the defendant received letters from an individual he described as "my mistress" and answered these letters in the plaintiff's presence, and by such conduct embarrassed, ridiculed and humiliated the plaintiff;

During the fall of 1961, the defendant screamed at the plaintiff while aboard their yacht, Roberta, and refused to answer her and otherwise treated her with scorn and disrespect so as to humiliate and embarrass her in front of their guests;

The defendant frequented the home of a female student beyond the normal period of instruction and made lengthy phone calls to her from their home;

The defendant made numerous trips to New York City without explanation and without advising the

plaintiff where he was going, and left their home in the evening on many occasions for the purpose of making secret lengthy telephone calls;

The defendant, during all of their married life, would not allow the plaintiff to know of his business affairs and embarrassed and ridiculed the plaintiff by telling her she didn't understand such things;

Beginning in June or July, 1962, the defendant refused to speak to the plaintiff and would scream at her if she endeavored to comfort or console him;

In July, 1962, while aboard their yacht, Monique, the defendant, by his conduct, behavior and manner, purposely upset the plaintiff and caused her to fear for her life and the life of their friends in the operation of the yacht;

On September 27, 1962 and again on October 28, 1962, in their home, the defendant made humiliating and embarrassing remarks about the plaintiff in front of their guests. The defendant also stated that if their guests saw him shoot the plaintiff, it would be an optical illusion;

On September 28, 1962, and thereafter, while aboard their yacht, Monique, the defendant screamed at the plaintiff in the presence of their guests and ran the yacht without charts in water unfamiliar to him;

During the summer and fall of 1962, the defendant relayed certain information to the cook, which information he knew she would pass on to the plaintiff,

all designed to terrify and upset the plaintiff, humiliate and embarrass her, and otherwise make her married life unbearable;

At parties and social functions, the defendant purposely ignored the plaintiff so as to humiliate her in front of her friends and members of the community;

The defendant kept a loaded gun upon the premises, and in remarks to the plaintiff, constantly mentioned it with the intent that such remarks should upset her and lead her to believe there was fear for her life, and on November 3, 1962, the defendant carried said gun into the plaintiff's bed chamber with the purpose either of killing the plaintiff, or causing her to fear for her life;

The defendant, during the year 1962, changed all of the joint checking and savings accounts standing in the plaintiff and the defendant's name, to his name alone;

On November 6, 1962, the defendant walked out of the family home and deserted the plaintiff.

I recommend:

1. That the plaintiff be given a decree of legal separation.

2. That the defendant be ordered to pay the plaintiff the sum of $1650 a month for her support, the same to be in full of all obligations to her as his wife.

3. That the defendant be ordered to pay to plaintiff's counsel the sum of $24,000 as counsel fees.

4. That the house in Darien be sold and the proceeds divided equally between the parties, or that the defendant pay the plaintiff her equity in an undivided one-half interest in said property.

5. The court order includes payment of taxes, mortgage interest, insurance and major repairs on the house in Darien. I recommend that these payments be continued until the house in Darien is sold.

ABRAHAM S. BORDON
State Referee

APPENDIX C.

No. 118006

Marguerite L. Nowell, vs. Ames Nowell. } Superior Court, Fairfield County, March 29, 1966.

MEMORANDUM ON

(1) OBJECTION TO CONSIDERATION BY THE COURT OF REFEREE'S REPORT and/or ANY OBJECTIONS AND EXCEPTIONS HERETOFORE FILED (dated February 11, 1966).

(2) MOTION FOR COUNSEL FEES TO DEFEND APPEAL (#103).

(3) DEFENDANT'S EXCEPTIONS AND OBJECTIONS TO ACCEPTANCE OF REFEREE'S REPORT (# 97).

(4) DEFENDANT'S MOTION TO AMEND ANSWER BY SETTING FORTH THEREIN A SECOND SPECIAL DEFENSE TO THE PLAINTIFF'S AMENDED COMPLAINT DATED MAY 31, 1963 AND AMENDMENTS THERETO DATED SEPTEMBER 22, 1965 (# 100).

(5) PLAINTIFF'S EXCEPTIONS AND OBJECTIONS TO ACCEPTANCE OF REFEREE'S REPORT (# 84).

As to (1), the Supreme Court has granted a motion to dismiss the appeal and the matter has become moot. Objection overruled.

As to (2), the defendant has filed numerous appeals to the Supreme Court from interlocutory orders

which appear to be taken solely for purposes of delay. A "fixe' prix" has been established in former appeals of $1000 which this court also finds to be reasonable. The plaintiff is allowed a counsel fee of $1000 in connection with appeal dated January 3, 1966, and filed February 2, 1966.

As to (3) the exceptions and objections filed by the defendant are overruled except for certain acts of cruelty which according to the evidence occurred prior to the removal into this state. See **Hare v. Hare,** 139 Conn. 149, 151. These consist of subsections (E), (N) and (O) of paragraph 3 of the memorandum on defendant's motion to correct (# 71), as incorporated in the amended report of the state referee (82 1/2). The incidents there related did not occur after the plaintiff removed into this state and hence cannot be included in the finding. **Garafalo v. Argraves,** 147 Conn. 685, 687.

As to (4), this court (# 57) enjoined the defendant from proceeding in the Texas action and he is in contempt for continuing to pursue the matter. Denied.

As to (5), the exceptions and objections are overruled. There is sufficient support in the evidence for the conclusions of the referee. See **Shrager v. Shrager,** 144 Conn. 483, 486.

WALL, J.

APPENDIX D.

A PORTION OF THE TRANSCRIPT OF THE PETITIONER TAKEN IN NEW YORK CITY ON JANUARY 21, 1965 AT THE LAW OFFICES OF MELENEY, DICK AND ENGEL, 420 LEXINGTON AVENUE, NEW YORK, NEW YORK COMMENCING ON PAGE 79, WHICH TRANSCRIPT WAS INTRODUCED AS AN EXHIBIT BEFORE THE STATE REFEREE.

Cross Examination by Mr. Bassick:

Q. Are the offices of Veritas Institute, Inc. still located at 325 East 18th Street?

A. Yes.

Q. How often do you, yourself, occupy those offices?

A. Nearly every day.

Q. Do you have occasion to occupy them during the nighttime?

A. I have been there late in the evening working.

Q. You listed your present address as the George Washington Hotel in New York City?

A. Yes.

Q. How long have you been residing at that address?

A. I have been staying there since January 4, 1964.

Q. Where did you reside prior to January 4, 1964?

A. For five days I stayed at the Hotel Roger Smith, I believe the name is, in Stamford.

Q. So that would be roughly the period December 31, 1963 to January 4, 1964?

A. Yes.

Q. Prior to that where did you reside?

A. I stayed at the New York Yacht Club.

* * *

Q. At the time of the hearing before Judge Leipner in February 1963, you indicated that at that point or prior to that you had bought a Renault automobile; is that correct?

A. Yes.

Q. That was purchased when, sir?

A. I would say that it was purchased in late 1962 or early 1963.

Q. Do you still own that car?

A. No.

Q. When was it sold?

A. In about May of this year.

Q. Was another car purchased in its place?

A. Yes.

Q. What kind of car was that?

A. A Rambler American.

Q. What year?

A. 1964.

* * *

Q. Does that car carry Connecticut registration plates?

A. It does.

Q. And did the Renault which preceded it also carry Connecticut plates?

A. It did.

APPENDIX E.

No. 118006

Marguerite Lovelett Nowell,	Superior Court,
vs.	County of Fairfield,
	(at Bridgeport)
Ames Nowell.	September 9, 1965.

To the Hon. Herbert S. MacDonald, a Judge of the Superior Court, said Court not now being in session:

APPLICATION FOR TEMPORARY INJUNCTION.

The plaintiff in the above-entitled matter, appearing herein by Edgar W. Bassick, III, her Attorney, respectfully represents and alleges that she was served with a Summons and Complaint on September 2, 1965 in an action bearing Docket No. 65-1768-DR/2 returnable to the Court of Domestic Relations #2 in and for Dallas County, Texas seeking a divorce.

Said Summons recites that the defendant, therein, Marguerite L. Nowell, must appear by filing a written answer to the plaintiff's petition on or before 10:00 a.m. of the Monday next after the expiration of 20 days after service.

The present action by Writ, Summons and Complaint dated November 19, 1962, was made returnable to the Superior Court for Fairfield County at Stamford on the First Tuesday of January, 1963 and, on January 30, 1963, transferred to the Superior Court for Fairfield County at Bridgeport.

On February 19, 1964, this Court (Leipner, J.) referred the matter for determination on its merits to

State Referee Abraham Bordon. Hearings were held before Referee Bordon on September 29 and December 4, 1964, January 25, May 10, May 11 and July 2, 1965. On August 24, 1965 the Referee filed his Report and the defendant has been granted an extension of time to October 1, 1965 to file his Motion to Correct and/or Exceptions or Objections to Acceptance of the Report.

In the aforementioned action for divorce, the defendant in this action, as plaintiff in that action, recites that he is (on March 15, 1965) a "bona fide inhabitant in the State of Texas, and has been such an inhabitant for more than twelve (12) months immediately preceding the filing of this petition and is a resident of the County of Dallas, State of Texas and has been such a resident for more than six (6) months immediately preceding the institution of this suit;"

On January 21, 1965, the defendant in this action testified in a deposition taken in New York City that he was then staying at the George Washington Hotel in New York City and had been staying there since January 4, 1964, that in the period December 31, 1963 to January 4, 1964, he stayed at the Hotel Roger Smith in Stamford, Connecticut, and prior to that time, he stayed in the New York Yacht Club in New York City and that the car he then owned and the one previously owned by him was registered in the State of Connecticut.

The defense of the Texas action will cause the plaintiff unnecessary cost and expense and should

not be allowed to proceed before the final determination of this matter.

WHEREFORE, the plaintiff respectfully moves this Court for an order restraining the defendant and his attorneys from prosecuting, pursuing, proceeding in, or in any other manner, taking action in or with respect to said action.

Dated at Bridgeport, Connecticut this 9th day of September, 1965.

The Plaintiff,

By EDGAR W. BASSICK, III
of
Pullman, Comley, Bradley
& Reeves,
Her Attorneys.

STATE OF CONNECTICUT }
ss. Bridgeport,
COUNTY OF FAIRFIELD } September 9, 1965.

Personally appeared, Edgar W. Bassick, III, signer of the foregoing, who took oath to the truth of the matters contained therein to the best of his knowledge, information and belief, before me.

A. REYNOLDS GORDON,
A Commissioner of the Superior Court.

ORDER.

The above-entitled application for temporary injunction having been presented to me, a Judge of the Superior Court, said Court not now being in session, and it appearing to me that a temporary injunction of the form and manner aforesaid should be entered,

NOW, THEREFORE, IT IS ORDERED:-

That this Court finds that said injunction should be issued and that no bond or other security should be required from the plaintiff, and

That the defendant, Ames Nowell, be and he hereby is, under the penalty of $100,000, forbidden by this Court, either directly or indirectly, personally or by his agents or attorneys, from prosecuting, pursuing, proceeding or, in any manner whatsoever, from taking action in or with regard to a certain lawsuit in the Court of Domestic Relations in and for Dallas County, Texas, or in any other Court of the State of Texas, or in any other action concerned with the relationship of the parties as husband and wife either in any Court of the State of Texas, or any other state, until the principal cause, as above captioned, shall have been determined or until further order of this Court.

Dated at New Haven, Connecticut this 9th day of September, 1965.

Herbert S. MacDonald
A Judge of the Superior Court

CITATION.

TO THE SHERIFF OF THE COUNTY OF FAIRFIELD, OR HIS DEPUTY, GREETINGS:

By authority of the State of Connecticut, you are hereby ordered and directed to serve a copy of the foregoing application for injunction and order therein upon Messrs. Hirschberg, Pettengill & Strong, at their office at Greenwich, Connecticut, on or before the 16th day of September, 1965.

Hereof fail not and due service and return make.

Herbert S. MacDonald
A Judge of the Superior Court

No. 118006

Marguerite Lovelett Nowell vs. Ames Nowell	Before: Hon. Herbert S. MacDonald, A Judge of the Superior Court September 9, 1965

CERTIFICATION INTO COURT.

The accompanying Application for Temporary Injunction and Order thereon in the above-entitled action, and proceedings thereon had before me, are hereby certified to said Court.

Dated at New Haven, this 9th day of September, 1965.

Herbert S. MacDonald
A Judge of the Superior Court

APPENDIX F.

No. 118006

Marguerite Lovelett Nowell, vs. Ames Nowell. } Supreme Court, State of Conn. April 13, 1967.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS DATED APRIL 5, 1967

STATEMENT OF FACTS.

The facts relative to the plaintiff-appellee's motion are set forth in the body of the motion itself. Basically, the defendant-appellant has been further in contempt of court for failure to pay counsel fees to defend the appeal as ordered by the Superior Court on June 29, 1966 and which counsel fees were ordered to be paid "forthwith".

ARGUMENT.

I. Merits of Motion

The record shows that the defendant has been in contempt on at least seven occasions involving violations of injunctions as well as deliberate refusals to pay alimony and counsel fees as ordered by the Superior Court. Specifically, the defendant has been found in contempt as follows:

1. On December 17, 1965, found in contempt for violation of Judge McDonald's order entered on September 12, 1965 enjoining prosecution of a Texas divorce action.

2. On December 17, 1965 found in contempt for violation of Judge Ryan's order entered on December 4, 1963 enjoining transfer of the assets of the Ames Nowell Trust.

3. On December 17, 1965, found in contempt for failure to pay taxes on the party's home in Darien as ordered by Judge Leipner in the order of temporary alimony dated on February 21, 1963.

4. On December 17, 1965, found in contempt for failure to pay counsel fees to defend a prior appeal.

5. On January 24, 1966 found in contempt for failure to pay temporary alimony as ordered by Judge Leipner on February 21, 1963.

6. On June 23, 1966 found in contempt for failure to pay counsel fees in connection with prior appeals as ordered by the Superior Court, temporary alimony in accordance with Judge Leipner's orders and taxes of the Town of Darien.

7. On March 17, 1967, found in contempt for failure to pay counsel fees as ordered by the Superior Court on June 29, 1966.

The findings of contempt in the lower Court would not appear to affect the jurisdiction of this Court, but the various contempts, and more particularly the defendant-appellant's contempt in failure to pay counsel fees to defend this appeal, do make the appeal voidable and subject to dismissal and a proper

ground, therefore, to ask this Court to dismiss the appeal.

Maltbie: **Conn. Appellate Procedure** Section 275

Since the defendant-appellant comes into this Court with unclean hands, he should not be permitted to maintain this appeal. It has been said:

> "There is no constitutional requirement that an appeal must be allowed from any judgment nor is it required by the principles of natural justice, and consequently an appeal is no more than a 'statutory privilege'. There is no vested right to an appeal nor is provision for an appeal required under the constitutional requirement of due process of law."

Maltbie: **Conn. Appellate Procedure** Section 1 (And cases cited therein)

The instant motion raises a question not unlike the question considered by the Court in **State v. Ward,** 134 Conn. 81. In that case this Court dismissed the appeals of two of the defendants for failing to pay the required fees for printing the evidence in connection with the presentation of the case on the appeal.

Under the authority of **Wehrhane v. Peyton,** 134 Conn. 486, 496, one who has violated a court order and is therefore in contempt of court will be refused aid from the courts from the State where the contempt arose. In the instant action justice requires that the defendant not be permitted to maintain this ap-

peal while he is in contempt of court orders and while he has failed to pay counsel fees to the appellee's attorneys which had been ordered.

II. Propriety of Motion to Dismiss

The instant motion to dismiss clearly fits within the language of the provisions of Section 679 of the Practice Book, which reads as follows:

> "Any claim that an appeal or writ of error should be abated or dismissed, whether based on lack of jurisdiction, failure to file papers within the time allowed, failure to prosecute with proper diligence **or any other ground,** shall be made by a motion to dismiss the appeal or writ. Any such motion must be filed in accordance with Sections 687 to 689 inclusive within ten days after the filing of the appeal or the return day of the writ, or if the ground alleged subsequently occurs, within ten days after it has arisen, provided a motion based on lack of jurisdiction or a failure to prosecute with proper diligence may be filed at any time."
>
> (Emphasis supplied)

It is clear that this motion comes within the provisions of the language in the section "or any other ground".

The plaintiff is aware that in **Heard v. Heard,** 116 Conn. 632, 637, the Supreme Court said that neither a Plea in Abatement nor a Motion to Dismiss was a proper pleading where an appellant was in arrears in alimony payments.

The court stated:

> "A motion to dismiss an appeal lies for a want of jurisdiction which appears plainly on the face of the record, or where it appears on the face of the appeal (citation). Neither a plea in abatement or a motion to dismiss was the proper pleading."

In the **Heard** case the proceeding was an appeal from the denial of a motion for modification. In the instant case the facts giving rise to the defendant's contempt appear on the face of the record.

Moreover the **Heard** case was decided in 1933. At that time the applicable Practice Book section concerning a motion to dismiss did not contain the language "or any other ground." Indeed the 1922 Practice Book Section 61, concerning a motion to dismiss, read as follows:

> "If on the call of the docket, or at any subsequent time, it appears that any record which might have been made up and printed has not been made up or printed, and that the appellant is not responsible therefor, or that the appellant in any case is not ready to argue it during the term, when reached, the appeal or writ of error, as the case may be, may be dismissed with costs and a judgment may be entered as, of course, affirming **pro forma** the judgment of the lower court."

The 1951 Practice Book, Section 436, incorporated the present language of Section 697 of the 1963 Practice Book. It would seem, therefore, that the present

provisions of Section 697 cure the void in the previous rules which gave rise to the **Heard** decision. By the provisions of Section 697, it is clear that the Motion to Dismiss is the proper motion and that this Court may dismiss a case where good grounds lie. Indeed, it has been suggested that under the present provisions of the Practice Book that the decision in the **Heard** case would now result in the dismissal of that action. The following language by Justice Maltbie is of particular interest:

> "While, under the former procedure, it was held that a plea in abatement was not the proper way to seek the erasure of assignments of error in appeals properly taken or to take advantage of a failure to include claims of law in a request for a finding, such rules would seem to fall within the scope of a motion to dismiss of the class now under discussion; and it may be that this would be so as regards a claim that a husband who was appellant in a divorce action was in arrears in his payment of alimony **pendente lite.**" (Citing **Heard v. Heard,** 116 Conn. 632, 637)
>
> Maltbie, **Conn. Appellate Procedure** Section 275

CONCLUSION.

The defendant-Appellant has physically removed himself from reach of the contempt remedies which would normally follow his utter disregard of the Connecticut Court orders. In addition to his prior contempts, he now seeks to prosecute the instant appeal while refusing to pay the counsel fees which were

ordered by the Superior Court to be paid to the plaintiff to defend this appeal and by his motion to vacate judgment in this action, even now seeks relief from this Court.

The instant action is equitable in nature (**Lee v. Lee**, 145 Conn. 355, 360). In this equitable action one who seeks equity must come into court with clean hands and to do equity. Where one has not done so, it is certainly proper for this Court to dismiss his appeal.

Respectfully submitted,

By PULLMAN, COMLEY,
BRADLEY & REEVES,
Her Attorneys.